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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,912	06/23/2003	Richard L. Antrim	006401.00399	7581
22908	7590	04/17/2006	EXAMINER	
BANNER & WITCOFF, LTD. TEN SOUTH WACKER DRIVE SUITE 3000 CHICAGO, IL 60606			KHARE, DEVESH	
			ART UNIT	PAPER NUMBER
			1623	
DATE MAILED: 04/17/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/601,912

Applicant(s)

ANTRIM ET AL.

Examiner

Devesh Khare

Art Unit

1623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 34 is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 34 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

The notice of allowance of the Office Action mailed on 11/15/2005 has been withdrawn. During the course of reconsideration of the application, a prior art reference not previously disclosed by the applicants or the examiner came to light (see rejection below).

Claims 1-10 and 34 are currently pending in this application.

35 U.S.C. 112, second paragraph rejection

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-10 and 34 are rejected under the second paragraph of 35 U.S.C. 112, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: there is no particular definition of an "extrusion reaction" in the specification. The specification at pages 9-10 (see paragraph [0025] of the PGPub) states clearly that dextrinization should be sufficient to convert at least a portion of highly digestible 1-4 bonds present in the starting material to other bonds. It is noted that there is also no clear equivalence of "dextrinization" with "extrusion reaction". The applicant failed to recite in the claim a process with reaction conditions that defines a novel product.

Claims which depend from an indefinite claim which fail to obviate the indefiniteness of the claim from which they depend are also seen to be indefinite and are also rejected for the reasons set forth supra.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2,7 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Levine et al. (U.S. Patent 5,009,900).

The applicants' claims are directed toward a saccharide-derived oligosaccharide mixture comprising: 1. a saccharide product with an average degree of polymerization of 1-4 mixed with; 2. malto-oligosaccharide when extruded after heat and work, portion of the malto-oligosaccharide derivatized with said saccharide.

Levine et al anticipates the claims as it teaches a saccharide product (col.4, lines 30-41) wherein (a) is a dextrose containing saccharide component (from starch), (b) is a maltodextrin component (equivalent to applicant's malto-oligosaccharide), (c) is polydextrose (could suffice as the saccharide component), and (d) is mono or disaccharide, such as maltose. Levine et al also discloses maltodextrins (col.4, lines 51-

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54) and extrusion process (col.8, lines 44-68). The mixture is then subjected to extrusion. Thus, this meets the process limitations.


Any inquiry concerning this communication or earlier communications from the

Examiner should be directed to Devesh Khare whose telephone number is (571)272-0653. The examiner can normally be reached on Monday to Friday from 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anna Jiang, Supervisory Patent Examiner, Art Unit 1623 can be reached at (571)272-0627. The official fax phone numbers for the organization where this application or proceeding is assigned is (703) 308-4556 or 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Devesh Khare, Ph.D.,J.D.
Art Unit 1623
April 7, 2006


Anna Jiang, Ph.D.
Supervisory Patent Examiner
Technology Center 1600